

AMENDED IN ASSEMBLY APRIL 8, 1996

CALIFORNIA LEGISLATURE—1995–96 REGULAR SESSION

ASSEMBLY BILL

No. 3305

Introduced by Assembly Members Setencich and Speier

February 23, 1996

An act to amend, *add, and repeal* Section 1102.6 of the Civil Code, and to add ~~Article 4 (commencing with Section 116021) to Chapter 5 of Part 10 of Division 104 of the Health and Safety Code, relating~~ *Article 2.5 (commencing with Section 115920) to Chapter 5 of Part 10 of Division 104 of the Health and Safety Code, relating* to swimming pools.

LEGISLATIVE COUNSEL'S DIGEST

AB 3305, as amended, Setencich. Swimming ~~pools~~ *pool*: safety: disclosures.

(1) Existing law requires a seller of residential property to make disclosures upon the transfer of that property, and sets forth the content and form of these disclosures.

This bill would, *commencing July 1, 1997*, add to the listing of required disclosures the presence or absence of a child-resistant safety fence for a pool, and a locking safety cover for a spa or hot tub.

(2) Existing law makes certain safety and sanitation requirements applicable to public swimming pools, including, but not limited to, the requirement that every person operating or maintaining a public swimming pool do so in a sanitary, healthful, and safe manner.

Existing law designates the State Department of Health Services as having supervision over these requirements, and requires every health officer, within his or her jurisdiction, to enforce building standards relating to swimming pools, as defined.

This bill would, in addition, enact the Swimming Pool Safety Act to establish certain safety standards requiring swimming pool enclosures, powered safety pool covers, or exit alarms, as defined. This bill would make these standards applicable commencing January 1, ~~1997~~ 1998, to any swimming pool located on the premises of a private single-family home for which a construction permit has been issued on or after January 1, ~~1997~~ 1998. This bill would also require any person entering into an agreement to build a swimming pool to give the consumer notice of the requirements of this bill. By increasing the enforcement duties of local health officers, this bill would impose a state-mandated local program.

This bill would exclude hot tubs with certain safety covers, public swimming pools, as defined, and any pool within the jurisdiction of a political subdivision that adopts an ordinance with requirements at least as stringent as the requirements of this bill.

~~This bill would require any family day care home, as defined, that provides services in a private home that has a swimming pool to provide a swimming pool enclosure that isolates the swimming pool from access to the home in accordance with certain requirements, and to meet additional staffing and pool safety requirements when engaged in providing day care services.~~

~~This bill would make violation of the requirements of this bill by owners of any property upon which a swimming pool is located a crime. By creating this new crime this bill would impose a state-mandated local program.~~

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that no reimbursement is required by this act for specified reasons.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 ~~SECTION 1.—The Legislature finds and declares all of~~
2 *SECTION 1. Section 1102.6 of the Civil Code is*
3 *amended to read:*
4 1102.6. (a) The disclosures required by this article
5 pertaining to the property proposed to be transferred are
6 set forth in, and shall be made on a copy of, the following
7 disclosure form:

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3 NOTE TO PRINTING OFFICE: INSERT
4 CAMERA-READY COPY HERE
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6 for Real Estate Transfer Disclosure Statement
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8 as printed on pages 2 to 6 of Chapter 817, 1994 Statutes.
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1 ***(b) This section shall become inoperative on July 1,***
2 ***1997, and, as of January 1, 1998, is repealed, unless a later***
3 ***enacted statute, that becomes operative on or before***
4 ***January 1, 1998, deletes or extends the dates on which it***
5 ***becomes inoperative and is repealed.***

6 ***SEC. 2. Section 1102.6 is added to the Civil Code, to***
7 ***read:***

8 ***1102.6. (a) The disclosures required by this article***
9 ***pertaining to the property proposed to be transferred are***
10 ***set forth in, and shall be made on a copy of, the following***
11 ***disclosure form:***

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(b) *This section shall become operative on July 1, 1997.*

~~the following:~~

(a) ~~Drowning kills over 100 young children, or toddlers, in California each year. For every child who dies, four suffer brain injury from near drowning incidents. Advances in medical technology are allowing more drowning victims to survive, but they are surviving with serious permanent neurological damage. Studies repeatedly show that most toddler drownings take place in backyard swimming pools. The child generally opens a door leading to the pool and drowns before being missed. Drowning children seldom cry out, but rather, they generally slip into the water and die in a few minutes. The child is often believed to be in the house, even napping, when he or she gets into the pool. The victim's parents usually have taken precautions to protect the child from the pool, but the child gets into the pool during a brief lapse in supervision.~~

(b) ~~One-third of the incidents take place in a relative's or friend's pool, and the rest take place at the child's home. Toddler drownings in public pools are rare. Drownings of children entering the pool from outside a fence or of children who are yard-trespassers are rarer yet.~~

(c) ~~In addition to the incalculable human cost of these tragic deaths, near drownings result in costly emergency medical responses and stays in intensive care units. Costs range from two thousand dollars (\$2,000) to eighty thousand dollars (\$80,000) per patient. The lifetime cost for care and treatment of a young child who has suffered brain disability due to a near-drowning incident is estimated to be four million five hundred thousand dollars (\$4,500,000). Some of these children suffer brain damage. The State Department of Developmental Services alone presently provides permanent in-patient care to over 70 child near-drowning victims, at an annual cost of one hundred twenty thousand dollars (\$120,000) for each child, with a net public cost of over nine million dollars (\$9,000,000) a year. Another 295 child~~

1 ~~near-drowning victims are cared for at home or in~~
2 ~~community facilities.~~

3 ~~(d) Experts in the fields of health care and injury~~
4 ~~prevention agree that a fence barrier between the home~~
5 ~~and pool is the single most effective means of preventing~~
6 ~~accidental drownings.~~

7 ~~(e) It is recommended that all new pools be designed~~
8 ~~in a manner to accommodate inclusion of a fence barrier~~
9 ~~of this type.~~

10 ~~SEC. 2. Section 1102.6 of the Civil Code is amended~~
11 ~~to read:~~

12 ~~1102.6. The disclosures required by this article~~
13 ~~pertaining to the property proposed to be transferred are~~
14 ~~set forth in, and shall be made on a copy of, the following~~
15 ~~disclosure form:~~



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3 ~~NOTE TO PRINTING OFFICE: INSERT~~

4 ~~CAMERA READY COPY HERE~~

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6 ~~for Real Estate Transfer Disclosure Statement~~

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8 ~~as printed on pages 2 to 6 of Chapter 817, 1994 Statutes.~~

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~~SEC. 3. Article 4 (commencing with Section 116021)~~
~~is added to Chapter 5 of Part 10 of Division 104 of the~~
~~Health and Safety Code, to read:~~

~~Article 4.—~~

SEC. 3. Article 2.5 (commencing with Section 115920
is added to Chapter 5 of Part 10 of Division 104 of the
Health and Safety Code to read:

Article 2.5. The Swimming Pool Safety Act

~~116021.—~~

115920. This act shall be known and may be cited as
the Swimming Pool Safety Act.

~~116021.1.—~~

115921. As used in this article the following terms
have the following meanings:

(a) “Swimming pool” means any man-made
watertight tank or cavity or other contained body of
water, that is wider than eight feet at any point and
contains water more than 18 inches in depth, intended for
the use of persons in bathing, wading, swimming, water
sports, or other aquatic activity. “Swimming pool” means
these structures whether placed below or above ground
level, and means only those structures located on the
premises of a private single-family home.

(b) “Public swimming pool” means a swimming pool
operated for the use of the general public with or without
charge, or for the use of the members and guests of a
private club. Public swimming pool does not include a
swimming pool located on the grounds of a private
single-family home.

(c) “Enclosure” means a fence, wall, or other barrier
that isolates a swimming pool from access to the home.

(d) “Hot tub or spa” means a man-made structure
containing water intended for recreational use in which
all controls, water-heating equipment, and
water-circulating equipment are an integral part of the
unit.

(e) “Approved ~~powered~~ safety pool cover” means a ~~powered~~ safety pool cover that meets all of the ~~performance standards of, and is approved by, the~~ *Emergency Performance Specifications of the American Society for Testing and Materials (ASTM) (ASTM-ES 13-89).*

(f) “Exit alarms” means devices that make audible, continuous alarm sounds when any door or window, that permits access from the residence to ~~any~~ *the* pool area that is without any intervening enclosure, is opened or is left ajar, ~~and that are approved or recommended by the United States Consumer Product Safety Commission.~~

~~116021.2.—ajar.~~

~~115922.~~ Commencing January 1, ~~1997,~~ 1998, except as provided in Section ~~116021.8,~~ 115925, every residence containing a swimming pool for which a construction permit is issued on or after January 1, ~~1997,~~ 1998, shall comply with at least one of the following:

(a) The pool shall be isolated from access to a home by a fence, wall, or other barrier that meets the requirements of this article.

~~(b) The pool shall be equipped with an approved powered safety pool cover.~~

~~(c) The residence shall be equipped with exit alarms.~~

~~(b) The pool shall be equipped with an approved safety pool cover.~~

~~(c) The residence shall be equipped with exit alarms on those doors providing direct access to the pool.~~

~~(d) A self-closing, self-latching device with a release mechanism located at a minimum of 54 inches above the floor on all doors providing direct access to the pool.~~

~~(e) Other means of protection, if the degree of protection afforded is not less than that afforded by any of the devices set forth in this section.~~

~~116021.3.—~~

~~115923.~~ An enclosure shall have all of the following characteristics:

(a) It isolates the swimming pool from the remainder of the property on which it is located, and from any children’s play area.

1 (b) A minimum height of 60 inches.

2 (c) A maximum vertical clearance from the ground to
3 the bottom of the enclosure of two inches.

4 (d) Openings, if any, do not allow passage of a sphere
5 equal to or greater than four inches in diameter.

6 (e) An outside surface free of protrusions, cavities, or
7 other physical characteristics that would serve as
8 handholds or footholds that could enable a child below
9 the age of five years to climb over.

10 (f) It is placed no less than 20 inches from the edge of
11 the swimming pool.

12 (g) Except as provided in subdivision (h), any access
13 doors or gates open away from the swimming pool and are
14 self-closing with a self-latching device placed no lower to
15 the ground than 60 inches.

16 (h) Where a disabled person resides on the property
17 where the swimming pool is located, a key-locking latch
18 may be substituted for the self-latching device.

19 (i) A wall of a building may serve as one portion of an
20 enclosure only if the wall contains no doors or windows
21 that open to provide access into the pool enclosure.

22 ~~116021.5.—~~

23 *115924.* Any person entering into an agreement to
24 build a swimming pool shall give the consumer notice of
25 the requirements of this article.

26 ~~116021.7. In addition to any other penalties that may~~
27 ~~be prescribed by law, the owner of any property on which~~
28 ~~a swimming pool is located that is out of conformity with~~
29 ~~this article is guilty of a crime as follows:~~

30 ~~(a) For a first conviction the defendant is guilty of an~~
31 ~~infraction and shall be fined not more than one hundred~~
32 ~~dollars (\$100) and ordered to correct the nonconformity,~~
33 ~~however, the fine may be waived if the defendant shows~~
34 ~~that the nonconformity was corrected within 45 days of~~
35 ~~the date on which a citation was issued.~~

36 ~~(b) For a second conviction the defendant is guilty of~~
37 ~~a misdemeanor and shall be fined not more than one~~
38 ~~thousand dollars (\$1,000), or imprisoned for not more~~
39 ~~than 60 days, or both that fine and imprisonment, and~~
40 ~~ordered to correct the nonconformity.~~

~~(e) For the third and subsequent convictions the defendant is guilty of a misdemeanor and shall be fined one thousand dollars (\$1,000) and imprisoned for less than one year.~~

~~116021.8.—~~

115925. The requirements of this article shall not apply to any of the following:

(a) Public swimming pools.

(b) Hot tubs or spas with locking safety covers that comply with the American Society for Testing Materials-Emergency Performance Specification (ASTM-ES 13-89).

(c) Any pool within the jurisdiction of any political subdivision that adopts an ordinance for swimming pool safety that includes requirements that are at least as stringent as this article.

(d) An apartment complex, or any residential setting other than a single-family home.

~~116021.9. Any family day care home as defined pursuant to Section 1596.78 that provides day care services in a private home that has a swimming pool shall meet the swimming pool enclosure requirements of subdivision (a) of Section 116021.2, and shall meet all of the following additional requirements when engaged in providing day care services:~~

~~(a) Tricycles, wagons, bicycles, and other riding toys shall not be kept in or allowed to enter the area within the swimming pool enclosure, thereby precluding a child from accidentally riding the toy into the swimming pool.~~

~~(b) The following safety equipment shall be kept within the swimming pool enclosure area:~~

~~(1) A ring buoy.~~

~~(2) A shepherd's hook.~~

~~(3) Nonskid decking.~~

~~(4) Posted safety rules.~~

~~(e) The staff shall receive training in pediatric cardiopulmonary resuscitation as set forth in Section 1596.866.~~

~~(d) If the swimming pool is used as part of a family day care program that is provided in that private home, it is~~

~~recommended that the licensee have, at a minimum, water safety training equivalent to that set forth in Section 116033, and shall be present at the swimming pool when the swimming pool is in use during the family day care hours.~~

~~(e) Staff to child ratios within the swimming pool enclosure shall be as follows:~~

~~(1) One to one for children under 13 months old.~~

~~(2) One to two for children from 13 months to 35 months old, inclusive.~~

~~(3) One to four for preschool children over 35 months old.~~

~~(4) One to six for schoolaged children.~~

~~SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution as a result of costs which may be incurred by a local agency or school district because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.~~

~~Moreover, no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for other costs because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act.~~

~~Also, notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.~~

~~SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.~~

~~Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act~~

1 *shall become operative on the same date that the act*
2 *takes effect pursuant to the California Constitution.*

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